

BILL No. 24 OF 1951 ³⁸⁷**THE EMPLOYEES' STATE INSURANCE (AMENDMENT) BILL, 1951.**

(AS INTRODUCED IN PARLIAMENT)

**A
BILL***to amend the Employees' State Insurance Act, 1948.*

BE it enacted by Parliament as follows :—

1. Short title.—This Act may be called the Employees' State Insurance (Amendment) Act, 1951.**2. Amendment of section 1, Act XXXIV of 1948.**—In section 1 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act),—

(a) in sub-section (2), for the words and letter "except Part B States" the words "except the State of Jammu and Kashmir" shall be substituted;

(b) in sub-section (3), for the words "for different States" the words "for different States or for different parts thereof" shall be substituted;

(c) in sub-section (5), for the words "with the approval of the Central Government" the words "where the appropriate Government is a State Government, with the approval of the Central Government" shall be substituted.

3. Amendment of section 2, Act XXXIV of 1948.—In section 2 of the principal Act,—

(a) for clause (2) the following clause shall be substituted, namely:—

(2) "benefit period" means such period being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months corresponding to the contribution period, as may be specified in the regulations:

Provided that in the case of the first benefit period a longer or shorter period may be specified by or under the regulations;

(b) for clause (5) the following clause shall be substituted, namely:—

(5) "contribution period" means such period, being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months, as may be specified in the regulations:

Provided that in the case of the first contribution period a longer or shorter period may be specified by or under the regulations;

(c) in clause (12),—

(i) in the definition of "factory", the words "or a railway running shed" shall be added at the end; and

(ii) for the figures "1934" the figures "1948" shall be substituted;

(d) in clause (15), for the figures "1934" the figures "1948" shall be substituted;

(e) in clause (17), in sub-clause (1), for the words, brackets, letter and figures "clause (e) of sub-section (1) of section 9 of the Factories Act, 1934" the words and figures "the Factories Act, 1948" shall be substituted;

(f) in clause (22), for the words "paid at regular intervals after the last day of the wage period" the words "paid at intervals not exceeding two months" shall be substituted.

4. Amendment of section 4, Act XXXIV of 1948.—In section 4 of the principal Act, in clause (d), for the words and letter "Part A States" the words and letters "Part A States and Part B States in which this Act is in force" shall be substituted.

5. Amendment of section 8, Act XXXIV of 1948.—In section 8 of the principal Act,—

(a) after clause (b) the following clause shall be inserted, namely :—

"(bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ;";

(b) in clause (c),—

(i) for the word "nine" the words "six" shall be substituted; and

(ii) sub-clause (i) shall be omitted.

6. Amendment of section 9, Act XXXIV of 1948.—In section 9 of the principal Act, for the word, brackets and letter "clause (b)", in both the places where they occur, the words, brackets and letters "clause (b) or clause (bb)" shall be substituted.

7. Amendment of section 10, Act XXXIV of 1948.—In section 10 of the principal Act, in clause (d) of sub-section (1), for the words and letter "Part A States" the words and letters "Part A States and Part B States in which this Act is in force" shall be substituted.

8. Amendment of section 12, Act XXXIV of 1948.—Section 12 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted namely :—

"(2) Where in the opinion of the Central Government any person nominated or elected to represent employers, employees or the medical profession on the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be."

9. Amendment of section 22, Act XXXIV of 1948.—In clause (a) of section 22 of the principal Act, for the words "the Corporation, the Standing Committee and the Medical Commissioner" the words "the Corporation and the Standing Committee" shall be substituted.

10. Amendment of section 26, Act XXXIV of 1948.—In section 26 of the principal Act,—

(a) in sub-section (2), the words and letter "Part B States" shall be omitted; and

(b) for sub-section (3), the following sub-section shall be substituted, namely :—

"(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of

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India or such other bank as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund."

11. Amendment of section 28, Act XXXIV of 1948.—In clause (v) of section 28 of the principal Act, the words and letter "Part B States" shall be omitted.

12. Substitution of new section for section 44 in Act XXXIV of 1948.—For section 44 of the principal Act, the following section shall be substituted, namely:—

"44 *Employers to furnish returns and maintain registers in certain cases.*—(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf."

13. Amendment of section 45, Act XXXIV of 1948.—In sub-section (2) of section 45 of the principal Act, after clause (c) the following clauses shall be inserted, namely:—

"(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;

(e) exercise such other powers as may be prescribed."

14. Amendment of section 50, Act XXXIV of 1948.—In section 50 of the principal Act,—

(a) in sub-section (1), for the word "occurring" the words "occurring or expected to occur" shall be substituted;

(b) in sub-section (2), for the words "the rate of twelve annas a day" the words "the daily rate specified in sub-section (3)" shall be substituted.

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The daily rate referred to in sub-section (2) shall be—

(i) the rate at which the insured woman could have claimed sickness benefit for any period of sickness during the benefit period in which the confinement occurs or is expected to occur if she had been qualified to claim sickness benefit during that period, or

(ii) twelve annas,

whichever is greater."

15. Amendment of section 53, Act XXXIV 1948.—In clause (iii) of section 53 of the principal Act, for the words and figures "Commissioner appointed under the Workmen's Compensation Act, 1923 (VIII of 1923)"

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the words "Employees' Insurance Court having jurisdiction" shall be substituted.

16. Amendment of section 55, Act XXXIV of 1948.—In section 55 of the principal Act,—

(a) for sub-section (1) the following sub-section shall be substituted, namely:—

"(1) Subject to the provisions of this Act, the Corporation may, either of its own motion or on the application of the person receiving the benefit review the payment of any disablement or dependants' benefit:

Provided that unless otherwise specified in the regulations made in this behalf every application for the review of a disablement benefit shall be accompanied by a certificate of a duly appointed medical officer."

(b) in sub-section (2),—

(i) for the words "the Commissioner" the words "the Corporation" shall be substituted; and

(ii) for the words "disablement benefit" the words "disablement or dependants' benefit" shall be substituted.

17. Amendment of section 56, Act XXXIV of 1948.—In sub-section (3) of section 56 of the principal Act, for the words "or as provided under the regulations, is in receipt of disablement benefit" the words "or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations" shall be substituted.

18. Amendment of section 58, Act XXXIV of 1948.—In sub-section (4) of section 58 of the principal Act, for the words and letter "for a Part A State" the words "of a State" shall be substituted.

19. Amendment of section 68, Act XXXIV of 1948.—In sub-section (1) of section 68 of the principal Act, for clause (i), the following clause shall be substituted namely:—

(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or";

20. Insertion of new Chapter V-A in Act XXXIV of 1948.—In the principal Act, after Chapter V, the following shall be inserted as Chapter V-A, namely:—

CHAPTER V-A.

TRANSITORY PROVISIONS.

73A. Employer's special contribution.—(1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employers' special contribution) at the rate specified under sub-section (3).

(2) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.

(3) The employer's special contribution shall consist of such percentage, not exceeding five per cent of the total wage bill of the employer,

as the Central Government may, by notification in the Official Gazette, specify from time to time :

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied :

Provided further that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation.—“Total wage bill” in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

73B. *Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court.*—(1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

(2) The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

73C. *Benefits under Chapter V to depend upon employee's contribution.*—The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV, in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

Explanation.—In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employer's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

73D. *Mode of recovery of employer's special contribution.*—The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land revenue.

73E. *Power to call for additional information or return.*—Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount

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thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

73F. *Power to exempt to be exercised by Central Government alone in respect of employer's special contributions.*—Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location of, or the nature of the industry carried on in, any factory or establishment or class of factories or establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in sections 87 to 91 inclusive shall be deemed to authorise any State Government to grant any such exemption.

73G. *Application of certain provisions of this Act to employer's special contributions.*—Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

73H. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order notified in the Official Gazette, make such provision or give such direction as appear to it to be necessary for the removal of the difficulty.

(2) Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.

73I. *Duration of Chapter V-A.*—The Central Government may, by notification in the Official Gazette, direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification :

Provided that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897 (X of 1897), shall apply as if the provisions of this Chapter had then been repealed by a Central Act.

21. Amendment of section 75, Act XXXIV of 1948.—In sub-section (1) of section 75 of the principal Act, after clause (e) the following clause shall be inserted, namely :—

“(ee) any direction issued by the Corporation under section 55 on a review of any payment of disablement or dependants' benefits ;”.

22. Amendment of section 86, Act XXXIV of 1948.—To sub-section (1) of section 86 of the principal Act, the words “ or of such other officer of the Corporation as may be authorised in this behalf by the Central Government ” shall be added at the end.

23. Amendment of section 94, Act XXXIV of 1948.—In section 94 of the principal Act, after the words, figures and brackets “ Insolvency Act, 1920 (V of 1920) ” the words and letter “ or under any law relating to insolvency in force in a Part B State ” shall be inserted.

24. Insertion of new section 94A in Act XXXIV of 1948.—After section 94 of the principal Act, the following section shall be inserted, namely :—

“94A. *Delegation of powers.*—The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.”

25. Amendment of section 97, Act XXXIV of 1948.—In sub-section (2) of section 97 of the principal Act,—

(a) for clause (xix) the following clause shall be substituted, namely :—

“(xix) the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain ;” ;

(b) for clause (xxi) the following clause shall be substituted, namely :—

“(xxi) the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the Principal Officers ;” ;

(c) after sub-section (2) the following sub-section shall be inserted, namely :—

“(2A) The condition of previous publication shall not apply to any regulations of the nature specified in clause (xxi) of sub-section (2).”

26. Omission of section 98, Act XXXIV of 1948.—Section 98 of the principal Act shall be omitted.

27. Insertion of new section 100 in Act XXXIV of 1948.—After section 99 of the principal Act, the following section shall be inserted, namely :—

“100. *Repeals and savings.*—If, immediately before the day on which this Act comes into force in a Part B State, there is in force in that State any law corresponding to this Act, that law shall, on such day, stand repealed :

Provided that the repeal shall not affect—

(a) the previous operations of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(c) any investigation or remedy in respect of any such penalty, forfeiture or punishment ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

Provided further that subject to the preceding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.”

28. Amendment of Schedule I, Act XXXIV of 1948.—In Schedule I to the principal Act, for paragraph 2 the following paragraph shall be substituted, namely :—

‘ 2. The average daily wages shall be :—

(a) in respect of an employee whose wage period is a day, the amount of wages earned during the week divided by the number of days worked in that week ;

(b) in respect of an employee employed on the basis of any other wage period, the amount of wages earned in that wage period in which the contribution falls due divided by the number of days worked in such wage period ;

(c) in respect of an employee employed on any other basis, the amount calculated on the basis of wages earned for the day on which the contribution falls due or on such other day as may be specified in the regulations in this behalf.

Explanation I.—Subject to any regulations made in this behalf, the term “ days worked ” means the number of days on which the employee worked for wages.

Explanation II.—Where any night shift continues beyond midnight, the period of the night shift after midnight shall be counted for reckoning the days worked as part of the day preceding.

Explanation III.—Except as provided by regulations, wages, pay, salaries or allowances paid in respect of any period of leave or holidays other than the weekly holidays shall not be taken into account in calculating wages.

Explanation IV.—“ Wage period ” means the period in respect of which wages are ordinarily payable whether in terms of the contract of employment, express or implied, or otherwise.

29. Amendment of Schedule II, Act XXXIV of 1948.—In Schedule II to the principal Act,—

(a) in paragraph 2,—

(i) after the word and figures “ section 48 ” the words “ plus the number of any other weeks in that contribution period for which contributions were paid in respect of the person ” shall be inserted :

(ii) in *Example 3*, for the words “ benefit year ” the words “ benefit period ” shall be substituted ;

(b) in paragraph 3, for the words “ provided that ”, the following words shall be substituted, namely :—

“ Provided that where no contribution was paid in respect of the employee during the aforesaid period of fifty-two weeks the disablement and dependants’ benefit shall be an amount equivalent to one-fifty-second part of the monthly wages calculated in accordance with section 5 of the Workmen’s Compensation Act, 1923 (VII of 1923), and provided further that ” ;

(c) in paragraph 4, in the second proviso to sub-paragraph (ii),—

(i) for the words “ legitimate children ” the words “ legitimate children or adopted son ” shall be substituted ;

(ii) for the words “ exceeds the full rate ” the words “ exceeds at any time the full rate ” shall be substituted ; and

(iii) for the word “ reduced ” the word “ altered ” shall be substituted ;

(d) in paragraph 5, for the words and figures "Commissioner appointed under the Workmen's Compensation Act, 1923" the words "Employees' Insurance Court having jurisdiction" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948, was passed by the Dominion Legislature in April 1948. It provides for certain benefits to industrial employees in case of sickness, maternity and employment injury. The Act permits the implementation of the scheme by stages.

2. It was intended that the scheme should be implemented in the first instance in Delhi and Kanpur, but regional implementation of such schemes is always attended with certain practical difficulties. The principal difficulties are the rise in the cost of production and the diminution of the competitive capacity of industries located in those regions. The main objections of the employers centred round the former difficulty and those of the Uttar Pradesh Government emphasised the latter. The Central Government have considered those objections and are anxious to avoid any competitive handicap to any region. This may be best achieved by an equitable distribution of the employer's contribution, even where implementation is effected only in certain areas, among the employers in the whole country—employers in regions where the scheme is implemented paying slightly higher contributions. This will minimise the contribution leviable from the employers and spread the incidence of the cost of the scheme equitably. This Bill is primarily intended to achieve this object.

3. Advantage has been taken of this opportunity to effect some other amendments to the Act which have been found necessary for rectifying certain defects and removing certain lacunæ in the Act. The reasons for the amendments are, wherever necessary, given in the Notes on Clauses attached to this Bill.

NEW DELHI;

JAGJIVAN RAM.

The 13th March, 1951.

NOTES ON CLAUSES

Clause 2.—Sub-section (3) of section 1 does not permit of implementing the scheme directly in a part of a State. This amendment provides for such implementation.

Clause 3 (c).—Railway running sheds are excluded from the definition of factories in the Factories Act, 1948. This amendment seeks to achieve the same object in respect of the Employees' State Insurance Act.

Clause 5.—In order to avoid frequent elections and notifications arising out of the changes in the State Governments' nominees, this clause provides for notification by the Central Government of three State Governments whose representatives would automatically be on the Standing Committee.

Clause 8.—This clause provides for the cessation of membership on the loss of representative character.

Clause 12.—This clause provides for the maintenance of records and furnishing of some additional information.

Clause 14.—The principal change is liberalisation of the daily rate of maternity benefit. By this amendment the insured women would be entitled to the existing daily rate of 12 annas or the sickness rate whichever is the higher.

Clause 15.—This clause removes the power to determine rates of dependants' benefit in certain cases from the Workmen's Compensation Act Commissioner and vests it in the Employees' Insurance Court. Similarly the ultimate responsibility for the other duties of Workmen's Compensation Act Commissioner is being shifted to the Employees' Insurance Court by other amendments in the Bill. This is in conformity with the general procedure for adjudications of other disputes and claims under the Act.

Clause 16.—The power of review is to be exercised in cases of dependants' benefits also.

Clause 20.—A new self-contained chapter is proposed providing for the collection of employer's special contribution throughout the Union. The rate of the contribution which may be varied from time to time is to be fixed by the Central Government after two months' notice by notification. The rate of the contribution shall be higher in areas where the scheme applies than in other areas. The manner of and time within which the special contribution is to be paid would be notified by the Central Government. Consequential provisions fitting the employer's special contribution into the existing scheme of the Act and other necessary provisions have been made in this Chapter. The Central Government is empowered to give directions or provide for such matters as may be necessary for the removal of any difficulty. The Chapter can be withdrawn from operation by the Central Government after giving three months' notice.

Clause 24.—This provision enables the Corporation and the Standing Committee to delegate to their officers such of their powers as they may think fit. This power is necessary for carrying on day to day administration.

Clause 25.—The principal change is the avoidance of previous publication in the case of regulations relating to the conditions of service of employees of the Corporation.

Clause 28.—The amendment is intended to simplify calculations and clarify certain doubtful points.

Clause 29.—The amendments are principally intended to remove certain doubts, anomalies and obvious omissions.

ANNEXURE

EXTRACTS FROM THE EMPLOYEES' STATE INSURANCE ACT, 1948 (XXXIV OF 1948).

* * * *

Section 1 (2) (3) and (5).

- (2) It extends to the whole of India except Part B States.
- (3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States.
- (5) The appropriate Government may, in consultation with the Corporation and with the approval of the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Section 2 (2) 397

(2) "benefit period" means such period of twenty-six consecutive weeks or six consecutive months corresponding to the contribution period, or in the case of the first benefit period, such longer or shorter period, as may be specified in the regulations.

Section 2 (5)

(5) "contribution period" means such period of twenty-six consecutive weeks or six consecutive months, or in the case of the first contribution period, such longer or shorter period, as may be specified in the regulations.

Section 2 (12)

(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923);

"seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes;

The expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the Factories Act, 1934 (XXV of 1934);

Section 2 (15)

(15) "occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1934 (XXV of 1934).

Section 2 (17)

(17) "principal employer" means—

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 (XXV of 1934), the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;

Section 2 (22)

(22) "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at regular intervals after the last day of the wage period, but does not include—

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge;

Section 4(d)

- (d) one person each representing each of the Part A States to be nominated by the State Government concerned ;

Section 8(c)

(c) nine members elected by the Corporation as follows :—

- (i) three members from among the members of the Corporation nominated by the State Governments ;
- (ii) two members from among the members of the Corporation representing employers ;
- (iii) two members from among the members of the Corporation representing employees ;
- (iv) one member from among the members of the Corporation representing the medical profession ; and
- (v) one member from among the members of the Corporation elected by Parliament.

Section 9

9. Term of office of members of Standing Committee.—(1) Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (a) or clause (b) of section 8, shall be two years from the date on which his election is notified :

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified :

Provided further that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

(2) A member of the Standing Committee referred to in clause (a) or clause (b) of section 8 shall hold office during the pleasure of the Central Government.

Section 10(1) (d)

10. Medical Benefit Council.—(1) The Central Government shall constitute a Medical Benefit Council consisting of—

- * * * *
- (d) one member each representing each of the Part A States to be nominated by the State Government concerned ;

Section 22(a)

22. Duties of Medical Benefit Council.—The Medical Benefit Council shall—

- (a) advise the Corporation, the Standing Committee and the Medical Commissioner on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other concerned matters ;

Section 26(2) & (3)

(2) The Corporation may accept grants, donations and gifts from the Central or any State Government, Part B States, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

(3) All moneys accruing or payable to the said Fund shall be received by such officers of the Corporation as may be authorised by it in this behalf and shall forthwith be paid by them into the Reserve Bank of India or such

other bank as may be approved by the Central Government, to an account styled the account of the Employees' State Insurance Fund.

Section 28(v)

(v) payment of contributions to any State Government, Part B State, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families including the cost of any building and equipment in accordance with any agreement entered into by the Corporation ;

Section 44

44. Returns by employers—Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him, as may be specified in regulations made in this behalf.

Section 50(1) & (2)

50. Maternity benefit.—(1) An insured woman shall be qualified to claim maternity benefit for a confinement occurring in a benefit period if during the corresponding contribution period, weekly contributions in respect of her were payable for not less than two-thirds of the number of weeks during which she shall be deemed to have been available for employment within the meaning of section 48, subject to a minimum of twelve contributions :

Provided that at least one contribution has been paid between thirty-five and forty weeks before the week in which the confinement takes place or in which notice of pregnancy is given before confinement whichever is more advantageous to the insured person.

(2) Subject to the provisions of this Act, and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-section (1) shall be entitled to receive it at the rate of twelve annas a day for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement.

Section 53 (iii)

(iii) In case the insured person does not leave him surviving any widow or children as mentioned in clause (ii) or in the case of an insured woman if she does not leave her surviving any children as mentioned in clause (ii), dependant's benefit shall be paid to the other dependants of the deceased at such rates as may be determined by the Commissioner appointed under the Workmen's Compensation Act, 1923 (VIII of 1923).

Section 55(1) & (2).

55. Review of benefits.—(1) Any payment of disablement benefit may be reviewed by the Commissioner appointed under the Workmen's Compensation Act, 1923 (VIII of 1923), on the application of—

- (a) an Insurance Officer of the Corporation, or
- (b) the person receiving the benefit,

and such application shall be accompanied by a certificate of a duly appointed medical officer :

Provided that such application may be made without such certificate in such circumstances as may be specified in the regulations made in this behalf.

(2) Subject to the provisions of this Act, the Commissioner may, on such review as aforesaid, direct that the disablement benefit be continued, increased, reduced or discontinued.

Section 56(3)

(3) A person shall be entitled to medical benefit during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or, as provided under the regulations, is in receipt of disablement benefit :

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations.

Section 58(4)

(4) In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the High Court for a Part A State) appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the State Government.

Section 68(1) (i)

(i) the difference between the amount of benefit which is paid to the said person and the amount of the benefit which would be payable on the basis of the contributions which should have been paid by the employer, or

Section 86(1)

86. Prosecutions.—(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner.

Section 94

94. Contributions, etc., due to Corporation to have priority over other debts.—There shall be deemed to be included among the debts which, under section 49 of the Presidency-towns Insolvency Act, 1909 (III of 1909), or under section 61 of the State Insolvency Act, 1920 (V of 1920), or under section 230 of the Indian Companies Act, 1913 (VII of 1913), are, in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability whereof accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be.

Section 97(2) (xix and xxi)

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

* * * * *

(xix) the returns to be submitted by the principal and immediate employers, the form in which and the times at which such returns should be submitted and the particulars to be given in such returns ;

* * * * *

(xxi) the conditions of service of the officers and servants of the Corporation other than the Principal Officers ;

SCHEDULE I—Para 2.

2. The average daily wages shall be :—

- (a) in respect of an employee employed on daily wages, the amount of wages earned during the week divided by the number of days worked (reckoned in terms of full working days);
- (b) in respect of an employee employed on weekly wages, the amount earned in the week divided by the number of days worked (reckoned in terms of full working days);
- (c) in respect of an employee employed on monthly wages, the amount earned in the month in which the contribution falls due, divided by the number of days worked (reckoned in terms of full working days);
- (d) in respect of an employee employed on the basis of any other wage period, the wages for the period, in which the contribution falls due, divided by the number of days worked (reckoned in terms of full working days) during the period;
- (e) in respect of an employee paid at piece-work rate, the amount earned during the week divided by the number of days worked (reckoned in terms of full working days);
- (f) in respect of an employee employed on hourly wages, the amount of wages earned during the week, divided by the number of hours worked and multiplied by eight;
- (g) in respect of employee who does not fall under clauses (a) to (f), the amount calculated on the basis of wages earned for the day on which the contribution falls due.

Explanation.—Except as provided by regulations, pay, salaries or allowances paid in respect of any period of leave or holidays with pay shall not be taken into account in reckoning wages.

SCHEDULE II—Paras. 2, 3, 4 and 5.

2. The daily rate of sickness benefit during any benefit period shall be an amount equivalent to one half of the sum of the assumed average daily wages as aforesaid for each of the weeks for which contributions were paid in respect of the person during the corresponding contribution period, divided by the number of weeks in that contribution period in which he was deemed to have been available for employment within the meaning of section 48 : provided that where the amount of the benefit so calculated includes a fraction of an anna, it shall be rounded to the next higher anna. The calculation indicated above is illustrated by the following examples :—

Example 1.—If the assumed average daily wages of the person as an employee were Rs. 1-4-0 a day for 10 weeks, Rs. 1-12-0 a day for 10 weeks and Rs. 2-8-0 a day for 6 weeks, the average of the assumed daily wages for the purpose of the rate of sickness benefit will be :—

$$\frac{10 \times 20 + 1 \times 28 + 6 \times 40}{6} = 27 \frac{18}{26}$$

The daily rate of sickness benefit payable in the benefit period will then be annas, rounded to the next higher anna, namely, 14 annas.

Example 2.—If the person was deemed to have been not available for employment for 14 weeks in any contribution period and was employed as an

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employee for only 12 weeks in that contribution period, his assumed average daily wages being Rs. 1-4-0 for the 12 weeks, the average of the assumed daily wages for the purpose of the rate of sickness benefit will be:—

$$\frac{12 \times 20}{(26-14)} = 20 \text{ annas.}$$

The daily rate of sickness benefit payable in the benefit period will then be 10 annas.

Example 3.—If the person was deemed to have been not available for employment for 4 weeks in any contribution period and was employed as an employee for only 20 weeks (he having been without any employment for 2 weeks) in that contribution period, his assumed average daily wages being Rs. 1-12-0 for 20 weeks, the average of the daily wages for the purpose of the rate of sickness benefit will be:—

$$\frac{20 \times 28}{(26-4)} = 25 \frac{5}{11} \text{ annas.}$$

The daily rate of sickness benefit payable in the benefit year will then be $12 \frac{8}{11}$ annas, rounded to the next higher anna, namely, 13 annas.

3. Disablement and dependants' benefit shall be an amount equivalent to one-half of the sum of the assumed average daily wages for each of the weeks for which contributions were paid in respect of the employee during the period of fifty-two weeks immediately preceding the week in which the employment injury occurs, divided by the number of weeks for which contributions were so paid: provided that where the amount of the benefit so calculated includes a fraction of an anna, it shall be rounded to the next higher anna. The calculation indicated above is illustrated by the following examples:—

Example 1.—If the assumed average daily wages of an employee were 14 annas a day for 20 weeks, Rs. 1-4-0 a day for 20 weeks and Rs. 1-12-0 a day for 12 weeks, the average of the assumed daily wages for the purpose of disablement and dependants' benefit will be:—

$$\frac{20 \times 14 + 20 \times 20 + 12 \times 28}{52} = 19 \frac{28}{52} \text{ annas.}$$

The disablement or dependants' benefit will then be $9 \frac{20}{26}$ to the next higher anna, namely, 10 annas a day.

Example 2.—If the employee worked only for 34 weeks in the period of 52 weeks preceding the week in which the employment injury occurs and his assumed average daily wages were 14 annas a day for 20 weeks and Rs. 1-4-0 for 14 weeks, the average of the assumed daily wages for the purpose of disablement and dependants' benefit will be:—

$$\frac{20 \times 14 + 14 \times 20}{34} = 16 \frac{16}{34} \text{ annas.}$$

The disablement or dependants' benefit will be $8 \frac{8}{34}$ annas, rounded to the next higher anna, namely, 9 annas a day.

The disablement or dependants' benefits calculated as aforesaid shall be called the full rate.

4. The disablement or dependants' benefit shall be payable to a person suffering from disablement as a result of an employment injury sustained as an employee in a factory or establishment to which this Act applies, or if he dies as a result of such injury, to his dependants, as follows :—

- (i) to the insured person—
 - (a) for temporary disablement, during the period of such disablement at the full rate ;
 - (b) for permanent partial disablement, at a percentage of the full rate, as provided in section 4 of the Workmen's Compensation Act, 1923 (VIII of 1923), for life ;
 - (c) for permanent total disablement, at the full rate for life ;
 - (d) in case of disablement not covered by clauses (a), (b) and (c) above, as may be provided in the regulations ;
- (ii) in the case of the death of the person, to his widow and children as follows :—
 - (a) to the widow during life or until remarriage an amount equivalent to three-fifths of the full rate and, if there are two or more widows, the amount payable to the widow as aforesaid shall be divided equally between the widows ;
 - (b) to each legitimate or adopted son, an amount equivalent to two-fifths of the full rate until he attains fifteen years of age ;
 - (c) to each legitimate unmarried daughter, an amount equivalent to two-fifths of the full rate until she attains fifteen years of age or until marriage, whichever is earlier :

Provided that the Corporation may continue such benefit to any legitimate or adopted son or any legitimate unmarried daughter until he or she attains the age of eighteen years if such son or daughter continues education to the satisfaction of the Corporation :

Provided further that if the total of the dependant's benefits distributed among the widow or widows and legitimate children of the deceased person as aforesaid exceeds the full rate, the share of each of the dependants shall be proportionately reduced, so that the total amount payable to them does not exceed the amount of disablement benefit at the full rate.

5. In case the deceased person does not leave a widow or legitimate child, dependants' benefit at such rates as may be determined by the Commissioner appointed under the Workmen's Compensation Act, 1923 (VIII of 1923) shall be payable as follows :—

- (a) to a parent or grand parent, for life ;
- (b) to any other male dependant, until he attains fifteen years of age ;
- (c) to any other female dependant, until she attains fifteen years of age or until marriage, whichever is earlier, or if widowed until she attains fifteen years of age.